

# Interventions in Perinatal Medicine: A Jurisdictional Analysis

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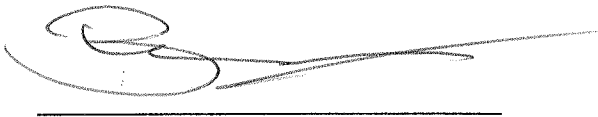
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Brenda McGivern

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## Abstract

This thesis concerns the role of courts in decisions regarding perinatal intervention. In particular, it examines the significance of jurisdiction to any determination a court may be asked to make about the performance or non-performance of some proposed intervention in the management of pregnancy and childbirth.

The central theme of the work is that any judicial involvement in perinatal decision-making must be guided by the nature of, and operation of principle in, each of the jurisdictions that the courts could be asked to exercise. Those jurisdictions include the common law, statute, and the ancient *parens patriae* jurisdiction. It is contended that the exercise of each of those jurisdictions has a different scope and is governed by different sets of principles.

An important premise is that the legal status accorded to a foetus, whilst relevant, is not necessarily determinative of any particular outcome. The analysis of each jurisdiction includes consideration of when, and to what extent, foetal status is relevant.

Since the nature of the interests concerned are fundamental, and since decisions in this area evoke such strong emotional and moral responses, it is critical that any legal response be principled and informed. This work aims to identify the relevant decision-making constructs at play in each jurisdiction and to illustrate the application of those constructs to decisions about perinatal intervention. The thesis is a conceptual legal analysis of the considerations and limitations relevant to the exercise

of each jurisdiction, and how each responds to the issues raised in the context of perinatal care.

The focus of the analysis is on Australian law, although as a British common law jurisdiction that position is influenced by persuasive common law jurisdictions, that influence being reflected in the analysis. Equally, this work will have relevance to common law jurisdictions beyond Australia.

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To the extent that this work is an achievement, it is the achievement of many. Its weaknesses are my own.

*I dedicate this work to my parents, Diana and Chuck McGivern,  
who gave me life and have inspired its living.*

# INTERVENTIONS IN PERINATAL MEDICINE: A JURISDICTIONAL ANALYSIS

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